



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 177903

PRELIMINARY RECITALS

Pursuant to a petition filed on November 11, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on December 8, 2016, by telephone. The record was held open upon completion of the hearing to allow the agency to submit documentation that its witness referenced and read aloud from during the hearing. The additional documentation was received by the close of business on December 8, 2016 and marked as Exhibit 22.

The issue for determination is whether the petitioner filed a timely appeal.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:
Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.

2. On June 29, 2016, the agency sent a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice to the petitioner which stated that she had received \$1,157 in benefits to which she was not entitled for the time period October 1, 2015 to April 30, 2016. The Overpayment Notice further stated that the petitioner had a right to file an appeal *by August 15, 2016* if she believed that the agency's decision was wrong. (Exhibit 15.) On June 29, 2016, the agency also sent the petitioner a FoodShare Overpayment Notice. (Exhibit 6.)
3. The petitioner received the Overpayment Notice and communicated with the agency by telephone on July 29, 2016 and on at least one other occasion prior to the appeal deadline. On July 29, 2016, the petitioner completed a FoodShare eligibility review and asked for information regarding the overpayment. The agency worker referred the petitioner's overpayment inquiry to a second agency worker who handles overpayment claims. On or about August 8, 2016, the petitioner spoke with the second agency worker and discussed repayment arrangements and requirements. (Testimony of [REDACTED], Testimony of petitioner, Exhibit 22.)
4. On November 11, 2016, the petitioner visited the agency, inquired about the overpayment, and submitted a fair hearing request. (Exhibits 1 and 22).

DISCUSSION

Medical assistance (MA) appeals generally and BadgerCare Plus appeals specifically must be filed within 45 days of the date of the adverse action. Wis. Admin. Code, § HA 3.05(3). When an appeal is late, the Division of Hearings and Appeals loses its authority to consider it. During the hearing, the petitioner testified that she received the overpayment notice, contacted the agency, and was told by an agency worker to "ignore the payments" and further instructed that "somebody would take it out of [her] FoodShare and somebody would take it out of [her] Medicaid. . ." I am persuaded that the petitioner and the agency worker discussed the petitioner's repayment obligations regarding both the FS and the Medicaid overpayment and that the petitioner may have been understandably confused by the information she received. However, the petitioner did not testify or otherwise establish that the agency advised her to not file an appeal of either overpayment finding.

The adverse action in this case was the overpayment notice dated June 29, 2016 and the deadline to file an appeal was Monday, August 15, 2016. The petitioner's appeal was filed 136 days after the date of the negative action (and 89 days after the appeal deadline). Because the petitioner's appeal was untimely, I have no jurisdiction to consider the merits of the case.

CONCLUSIONS OF LAW

The petitioner for review was untimely and there is thus no jurisdiction to consider the merits of this case.

THEREFORE, it is

ORDERED

The petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of January, 2017

\s _____
Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 4, 2017.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability